

**Susan Masten
President
National Congress of American Indians**

**Testimony on
the Goals and Priorities of the Member Tribes
of the
National Congress of American Indians
for the 107th Congress**

**Before the
Senate Committee on Indian Affairs**

**March 22, 2001
Washington, DC**



**SUSAN MASTEN, PRESIDENT
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I. INTRODUCTION

Good afternoon, Vice Chairman Inouye, Chairman Campbell, and distinguished Committee members. My name is Susan Masten, and I am Chair of the Yurok Tribe and President of the National Congress of American Indians (NCAI). On behalf of NCAI's 250 member tribal nations, I am very pleased to have the opportunity to present testimony regarding the goals and priorities of the member tribes of NCAI for the 107th Congress.

I want to begin today by reflecting on the wisdom of the many great Indian leaders who came before us and founded the NCAI. As you know, the 561 Indian Nations in the United States are a very diverse group, ethnically, culturally and linguistically. In 1944, when NCAI was founded, our ancestors had the wisdom and understanding to recognize the need for unity and cooperation among tribal governments for the protection of treaty rights and tribal self-government. Even though there was a common cause, problems still remained in working together due to differences in history, resources, and ways of life. Every day tribal governments are working to overcome those difficulties and this hearing regarding the priorities and issues of NCAI member tribes is a tribute to those ancestors who gave so much to ensure that American Indian tribes and our respective cultures could continue.

With that in mind, I want to emphasize how very difficult it is for NCAI to come to today's hearing and focus on only a handful of issues. NCAI currently has 250 member tribes, and they are concerned with a very broad range of issues. For the purposes of today's hearing, we have narrowed our focus to fourteen issues, a relatively large number, but even

then we will omit many important ones. We chose these issues because they are the most fundamental for the purposes of protecting tribal self-determination and serving the health and welfare of Indian people, and because they are the issues that our member tribes most frequently bring to our attention.

II. TRIBAL SOVEREIGNTY AND THE EDUCATION OF AMERICA

It is well established in the U.S. Constitution and federal treaties, statutes and court opinions that Indian tribes are sovereign governments with the right to make their own laws for the protection and benefit of their tribal members. The treaties created a fundamental contract between Indian Nations and the United States. Indian Nations ceded millions of acres of land that made the United States what it is today, and in return received the guarantee of self-government on their own lands.

Tribal sovereignty today serves the same purpose that it has since the beginning: it empowers Indian Nations to remain culturally viable as distinct groups of people. Tribal governments provide a broad range of governmental services on tribal lands, including education, law enforcement, justice systems, and environmental protection and provide basic infrastructure such as roads, bridges, and public buildings. Self-government is essential if tribal communities are to continue to protect their unique cultures and identities.

Unfortunately, too few people today are even aware that Indian Nations have the power of self-government. This is a matter that is rarely taught in schools, and most Americans never have an interaction with a tribal government because they are largely located in the rural areas of the United States. There is a great misunderstanding in the general public, that is sometimes found in Congress, that Indian tribes existed in the past but have little relevance in the present and that today's Indian tribes are little more than an ethnic or social grouping. It is with this fundamental misunderstanding that the general public and Congress may consent to legislative efforts to remove the sovereign rights of tribes. As Felix Cohen observed "confusion and ignorance in fields of law are allies of despotism."

The status of Indian Nations as a form of government is at the heart of nearly every issue that touches Indian Country. It is only when the general public and Congress understand that an Indian tribe functions as a government and provides basic governmental services, that the principles of tribal governance will be recognized and respected. As the history of federal policy toward Indian Nations illustrates, federal protection of Indian tribes is never secure. In the 1990's there was an increase in the amount of hostile legislation toward the exercise of tribal self-government. A variety of legislation surfaced in the U.S. Congress that would cripple the tribes ability to provide basic government functions and services, exercise legal jurisdiction, enforce treaty rights, recover land or raise revenues for government functions.

Recently, tribal leaders had the opportunity to hear from Secretary of Interior Gale Norton

and she confirmed that the Bush Administration will support tribal self-determination and self-governance, just as every Administration has since President Nixon, and that she supports government-to-government consultation with tribal leadership. She announced that she plans to put together a strong management team that will protect tribal trust assets and promote education for our children. Her positive statements provide assurance that the Bush Administration is starting off on a solid foundation of respect for tribal governments.

However, as you know, we have our work cut out for us in the coming weeks, months and years. We will have to continue to work hard to meet with the Administration and the new Congress and be sure that they understand both the foundation and the details of the critical issues that are facing Indian Country. This will require a high degree of vigilance, coordination and action by all tribal governments. This is the time to get ahead of the curve and educate the new Administration and the new Congress before the threats materialize, as they inevitably will. In addition, we have many great opportunities for positive change, and we need to push those agendas firmly forward.

It is in this area of public education that we are seeking the assistance of the members of the Senate Committee on Indian Affairs. The stature and well-earned respect accorded to this Committee are critical to educating the public and new members of Congress that tribal self-governance is modern, democratic, fair and deserving of respect. That in addition to being culturally and historically rich, tribal governments are good neighbors and good partners in economic development. It is up to each of us to help the public become informed about tribal governments, and to help to protect them. The Indian Nations of this great country are depending on your efforts and thank you greatly for them.

III. FY2002 APPROPRIATIONS

Achieving sufficient levels of annual federal appropriations for programs that assist Indian people and Indian tribes remains to be one of the top priorities for NCAI. This goal is especially important to our member tribes and for all of Indian Country because of the continual high population growth rate of Indian reservations which has put great strains on an already inadequate infrastructure. Education, law enforcement, transportation, health care, jobs, housing, technology, water and sewer systems – each of these basic governmental services all too often falls victim to resources that are spread far too thin.

While FY2001 funding levels for Indian programs certainly made great strides toward meeting the basic programmatic needs of tribes, our work is not yet done. In order to fully support tribal self-government and economic self-sufficiency, Congress must not turn back the clock on last year's gains and in fact should consider increases for key programs that serve Indian Country.

NCAI submitted to this Committee on March 13, 2001, a written statement regarding the

President's budget request for FY2002 Indian programs and services. Since the President's "Blueprint for New Beginnings" failed to provide many substantive, agency-level details about the FY2002 budget request, our statement addressed the proposed funding levels that were available and highlighted those programs that we believe are critically important to Indian Nations. Until these details become available through the release of more comprehensive agency budgets, it is extremely difficult to gauge the impact of the proposed FY2002 budget on programs that serve American Indians and Alaska Natives. Nonetheless, NCAI seeks support from this Committee to ensure that Indian programs are fully funded during the FY2002 Appropriation process.

IV. RECOVERY OF TRIBAL LANDS

Though many Americans believe that tribal lands were taken only through military means by the United States during its early history, the reality is that the United States continued to take away tribal lands long after the treaties were signed, even up until the 1970's. The severe and continuing economic, social and cultural disruptions caused by enormous land loss are felt every day throughout Indian Country, and will doubtlessly be felt for many more generations. Indian tribes have an extremely compelling and urgent need to be able to recover land into federal trust status.

The principal goal of the Indian Reorganization Act of 1934 (IRA) was to halt and reverse the abrupt decline in the economic, cultural, governmental and social well-being of Indian tribes caused by the disastrous federal policy of "allotment" and sale of reservation lands. Between the years of 1887 and 1934, the U.S. Government took more than 90 million acres from the tribes, nearly 2/3 of all reservation lands, and sold it to settlers. The IRA is comprehensive legislation for the benefit of tribes that stops the allotment of tribal lands, continues the federal trust ownership of tribal lands in perpetuity, encourages economic development, and provides a framework for the reestablishment of tribal government institutions on their own lands.

Section 5 of the IRA, 25 U.S.C. §465, provides for the recovery of the tribal land base and must be viewed in light of the IRA's overall goals of recovering from the loss of land and reestablishing tribal economic, governmental and cultural life:

The Secretary of the Interior is hereby authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians.

Section 5 is broad legislation designed to implement the fundamental principle that all tribes in all circumstances need a tribal homeland that is adequate to support economic activity and self-determination. As noted by one of the IRA's principal authors,

Congressman Howard of Nebraska, “the land was theirs under titles guaranteed by treaties and law; and when the government of the United States set up a land policy which, in effect, became a forum of legalized misappropriation of the Indian estate, the government became morally responsible for the damage that has resulted to the Indians from its faithless guardianship,” and said the purpose of the IRA was “to build up Indian land holdings until there is sufficient land for all Indians who will beneficially use it.”(78 Cong. Rec. 11727-11728, 1934.)

As Congressman Howard described these land reform measures:

Considering the magnitude of the losses of Indian land brought about by the past 50 years of incompetent Federal guardianship, the purchase program here proposed is indeed a very modest restitution; and it is moreover an investment that will many times repay itself by taking Indians off the relief and ration rolls.

78 Cong. Rec. 11730.

This Congress, by adopting this bill, can make a partial restitution to the Indians for a whole century of wrongs and of broken faith, and even more important – for this bill looks not to the past but to the future – can release the creative energies of the Indians in order that they may learn to take a normal and natural place in the American community.

78 Cong. Rec. 11731.

Of the 90 million acres of tribal land lost through the allotment process, only about 8 percent have been reacquired in trust status since the IRA was passed sixty-seven years ago. Still today, many tribes have no land base and many tribes have insufficient lands to support housing and self-government. Most tribal lands will not readily support economic development. And the legacy of the allotment policy, which has deeply fractionated heirship of trust lands, means that for most tribes, far more Indian land passes out of trust than into trust each year.

Moreover, the acquisition of trust lands is an important component of the Self-Determination policy. As you know, President Nixon initiated the Self-Determination policy in 1970. That policy – which has been strongly supported by every Administration since that time – calls for renewed tribal control over tribal affairs. Self-Determination is based on the premise that the tribes themselves, and not federal officials in Washington, are best situated to address their own local problems. NCAI focuses much of its work on advancing the principles of Self-Determination. While much progress has been made, we still have a long way to go. As we see it, one of the major constraints in this regard concerns land.

Tribes simply can not advance their cultural, governmental and economic goals in the absence of a sufficient land base. In short, the ability to acquire some additional trust lands is vital to the future of the Self-Determination policy.

The IRA reflected a fundamental shift in federal Indian policy – away from the devastating policy of allotment, in favor of a new policy of promoting the governmental, cultural and economic advancement of tribes. Today, however, there is opposition to tribal governments reacquiring land in trust, largely from surrounding local and state governments. In response to that opposition, the Secretary of Interior, under the Clinton Administration, pushed forward a set of regulations on land to trust that were published in final form on January 16, 2001. The new Secretary, under the Bush Administration, is reviewing these new rules to determine whether she will allow them to become effective. The effective date is set at April 16, 2001.

NCAI is urging the Secretary to go forward with the new regulations regarding the acquisition of lands in trust. Those regulations were the result of a comprehensive process undertaken by the Department – going back to 1997. There were hundreds of comments on the proposed regulations – by all concerned including NCAI and tribes, as well as many state and local governments. NCAI and the tribes worked long and hard to make our views known by the Department during the process leading up to these new trust land regulations. The Department by no means accepted all our views in the final regulations, and we have significant concerns about the manner in which the final regulations address various issues -- including the omission of the Alaska tribes entirely, and the treatment of contiguous lands. At the same time, NCAI feels strongly that the work that went into these regulations should not now be abandoned.

NCAI believes that on balance the new regulations provide a considered and reasonable framework for addressing the land acquisition issue. The new regulations provide opportunities for all concerned parties to be heard. They incorporate a time deadline for agency action – which is important to tribes that have had their trust land acquisition applications unduly delayed, sometimes for years on end. And the new regulations provide more detailed, concrete standards, which provide an important measure of fairness to all parties by clarifying at the outset the manner in which a trust land application will be evaluated.

NCAI wants to stress that the trust lands issue is vitally important to tribes nationwide, and that the federal government has a responsibility to ensure that tribal land acquisition can take place. We appreciate your consideration of NCAI's position, and we look forward to working with you in addressing this matter.

V. ECONOMIC DEVELOPMENT

As this Committee is well aware, creating and sustaining economic development in Indian

Country relies upon many factors. These factors range from the availability of financing to start or expand tribal business, education of the tribal workforce, infrastructure development for reservation accessibility, strengthen tribal court systems for internal controls and regulations, and providing technical assistance for new business development. Currently, there are a number of programs that provide assistance to tribes in these areas, including the Bureau of Indian Affairs' Office of Economic Development, HUD's Community Development Block Grant program, ANA's Social and Economic Development Strategies grant program, the Department of Commerce's Office of Native American Business Development, the Minority Business Development Agency's Native American Business Development Centers, and the Economic Development Administration. There is also the Small Business Administration's Tribal Business Information Centers and Small Business Development Centers, and the Department of Treasury's Community Development Financial Institutions Fund.

Unfortunately, even with all of these programs, there still exists severe poverty and unemployment on Indian reservations which can mostly be attributed to the history of federal mismanagement of Indian property and the historical under funding of federal programs. Therefore, tribal governments are very thankful that this Committee has taken the lead on Indian economic development issues and has taken some very positive legislative steps in the past to help spur economic development in Indian Country. For example, in November 2000, the Native American Business Development, Trade Promotion, and Tourism Act of 2000 was enacted that created within the Department of Commerce an Office of Native American Business Development. This office will provide the much needed coordination between the programs and assistance to Native Americans in the areas of business development and trade promotion. NCAI was in full support of this office and passed NCAI Resolution #STP-00-091 (attached), endorsing any funding requests by the Commerce Department and other federal agencies to further its objectives and activities.

NCAI is pleased to see that this Committee has introduced new legislation that will assist tribes in creating sustainable economic development. NCAI supports any federal assistance that is available to tribes and encourages this Committee to continue to work with our membership in identifying new ways of creating sustainable economic development on Indian reservations. NCAI also urges this Committee to support the funding levels identified in our appropriations testimony previously forwarded.

VI. HEALTH CARE

Mr. Vice Chairman, as this Committee knows first hand, quality health care for tribal members has and continues to be among the top priorities of tribal governments. With inadequate medical services, facilities and treatment programs in most tribal communities Indian people have the highest levels of chronic diseases such as diabetes, infant mortality, teen suicide and substance abuse. The member tribes of NCAI are appreciative

of the focus this Committee has provided on the reauthorization of Public Law 94-437, the Indian Health Care Improvement Act. Per NCAI Resolution # STP-00-053 (attached), we look forward to working with the Committee during this Congress in support of S. 212.

Accordingly, we also support efforts to elevate the Director of the Indian Health Service (IHS) to Assistant Secretary of Health and Human Services. NCAI supports S. 214 and H.R. 293 and any executive action which would elevate the position of the IHS Director. As this Committee knows, the IHS Director holds a position of extreme importance for the health of Indian people and deserves a rank commensurate with the responsibilities of such a position. The IHS, the largest direct health care provider within the HHS Department, should answer directly to the Secretary to insure that the issues that impact the agency are addressed. There are many legal and cultural issues that are unique to Indian health programs, and tribes look to the IHS Director to insure that these are taken into consideration when Department policy and regulation are developed. In order to do this effectively, the Director needs to report directly to the Secretary and to serve at the top policy making level within the Department.

VII. INDIAN EDUCATION

On October 29, 2000, NCAI strengthened its partnership with the National Indian Education Association (NIEA) and reaffirmed its commitment to Indian education issues through a formal Memorandum of Agreement (MOA). In the MOA, NCAI and NIEA joined forces with the National Indian School Board Association (NISBA) and the American Indian Higher Education Consortium (AIHEC) to create a unified front on Indian education. This combined power will preserve and protect the successful efforts NCAI and other organizations have undertaken on behalf of Indian students – and to build a brighter future through new and better coordinated policy initiatives.

It is in this cooperative spirit that NCAI supports the recommendations of the NIEA provided to this Committee on March 14, 2001, regarding S. 211, the Native American Education Improvement Act of 2001. We also echo the concerns raised by NIEA in regards to President Bush's proposed new education strategies guaranteeing that "no child be left behind" and the additional demands placed on Indian schools already faced with limited resources.

In regards to the reauthorization of the Elementary and Secondary Education Act (ESEA), NCAI supports the request that this Committee holds additional hearings in order to consider the entire breath of Indian education programs in the Department of Education. We also request the Committee's support in seeking a New Millennium White House Conference on Indian Education that would provide national attention on Indian education in the 21st century.

Lastly, NCAI seeks the support of this Committee in ensuring that: adequate funding and

resources are provided to address the many needs of Indian students and Indian schools; the Executive Orders on American Indian and Alaska Native Education and Tribal Colleges are both supported and carried out; and, the many concerns, suggestions and recommendations of tribes and tribal organizations such as NIEA, NISBA, and AIHEC are addressed and implemented.

VIII. WELFARE REFORM

Also due for reauthorization is Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, better known as Welfare Reform which provided a major change in federal policy concerning assistance to poor families and children. Responding to the widespread belief that people who could work should do so, PRWORA refocused on moving people away from cash assistance and into work. The law capped federal spending for the primary cash assistance program serving poor families and children, ending the Aid to Families with Dependent Children (AFDC) program. Under the newly established Temporary Assistance for Needy Families (TANF) program, which replaced AFDC, poor families are required to work and are no longer entitled to assistance; most families can receive federal cash assistance for no longer than 60 months. Although with fewer resources than state governments, PRWORA also offered tribal governments the unprecedented opportunity to administer TANF.

While these changes dramatically altered the provision of services to poor families and children throughout the country, tribal communities have particularly and uniquely been affected by welfare reform. Specifically, many tribal communities suffer from disproportionate poverty rates; remote, rural geography; inaccessibility of services and high cost of service delivery; lack of economic base; inadequate training, job opportunities, and support services; and lack of facilities and infrastructure. Tribes also face challenges in coordinating tribally-provided and state-provided services, as there are still various related programs that tribes do not have the authority to administer directly. Beyond the commitment of the federal government to provide a safety net for all low-income families, the United States government has also made unique commitments of a higher order to Indian tribes in treaties and laws. In exchange for millions of acres of ceded lands, the United States government has an obligation to provide for the health, safety and welfare of tribal communities beyond the implementation of welfare reform.

Since Welfare Reform was enacted, every tribe has dealt with the many challenges which PRWORA presents to tribal children, families and communities. Tribes commonly provide child care, employment, training, education and a variety of social services to needy Indian people within their service areas. Many of these services are funded through Indian programs authorized under PRWORA. In addition, tribes devote a significant amount of the other federal resources they receive under other statutes to dealing with welfare reform requirements. Some tribes also provide services to their people on public assistance through grants and contracts from state government agencies. Many tribes have adopted new and innovative approaches to restructuring and integrating their services, in part using the

opportunities under Pub. L. 102-477, to better serve their needy families. Pub. L. 102-477, the Indian Employment, Training and Related Services Demonstration Act of 1992 allows tribes to integrate the employment, training and related services they provide in order to improve effectiveness of services, reduce joblessness and serve tribally-determined goals. In effect, tribes can use Pub. L. 102-477 to co-locate services and streamline eligibility processes, providing recipients with one-stop shopping.

Tribes administer a variety of programs under PRWORA. To date, 30 Tribal TANF plans, serving 158 tribes, have been approved. Two-hundred and fifty-seven Tribal Child Care grantees, serving over 500 tribes, have received \$71 million, approximately 2 percent of the federal Child Care Development Fund. Four tribes run Child Support Enforcement programs. Seventy-eight tribal grantees administer the Native Employment Works program, and 86 tribes administered \$5 million in Welfare-to-Work grants.

Tribal governments have shown great enthusiasm for operating new programs and for re-designing service delivery systems. While struggling with limited resources and the lack of employment opportunities on reservations, tribes have made great strides in offering coordinated, holistic support services to their tribal members. Tribal governments have made assistance programs and support services far more accessible to their communities than ever before. Tribes have also begun to take advantage of the opportunity to become directly involved in the administration of child support enforcement programs.

Tribal governments maintain that welfare reform is not only a policy but a process as well. Tribes must have the same opportunity as states—to design programs, to modernize and customize services that are flexible and responsive to individual client needs.

American Indian and Alaska Native tribal governments are committed to:

- ▶ Strengthening tribal families,
- ▶ Protecting the interests of tribal children,
- ▶ Promoting family self-sufficiency,
- ▶ Substantially reducing dependence on public assistance, and
- ▶ Developing economically prosperous and culturally thriving tribal communities.

For generations, poverty has been prevalent in many Indian communities, in part a result of past federal policy. Any formula to reduce public assistance and develop economically viable tribal communities must include a substantial, strategic investment in Indian and Alaska Native communities. A dual investment strategy dictates both an investment in critical supports for individual Indian families and for tribal communities.

In the reauthorization of programs covered by PRWORA, tribal governments have advanced the following guiding principles that are essential in helping tribal families in

reservation and other tribal communities to become self-sufficient. Any legislation that is considered should:

- ▶ Provide funding directly to tribes based on a government-to-government relationship.
- ▶ Be adequately funded to meet tribal needs, including funding for capacity building and special needs.
- ▶ Have the flexibility to serve the needs of a wide variety of persons on welfare, transitioning off welfare or at risk of becoming dependent on cash assistance. Policies should authorize tribes to provide any types of services and activities that they consider effective in furthering self-sufficiency.
- ▶ Include education, job creation, and economic development components.
- ▶ Provide a structure to encourage diplomatic relations and constructive cooperation between tribes and states.
- ▶ Clarify that reduction of poverty is a goal of welfare reform.

Indian tribal governments and Indian families are very committed to the principle of self-sufficiency at both the community and the family levels. We call upon the Congress and the Administration to make the substantial investment necessary to empower tribal governments to build the economic and social infrastructure to move tribal families to self-sufficiency in the short-term, and to make reservations thriving economic communities in the long-term.

IX. STATE TAXATION

Taxation within Indian Country over the past several years has become a hot bed of debate, where lobbying groups for the retail cigarette and motor fuel trade are claiming that Indian retailers located on Indian lands are not remitting “lawfully imposed” state sales taxes on gasoline and tobacco products sold to non-Indians.

These groups have been able to persuade certain members of Congress to introduce legislation that would eliminate the alleged advantage. The most extreme piece of legislation was introduced in the first session of the 106th Congress, which threatened to take Indian land out of federal trust status if the Indian retailer did not pay the “lawfully

imposed” state sales taxes.¹ Fortunately, none of these extreme measures have been passed.

The collection of state sales taxes on tribal lands has an unfair and disproportionate effect of dual taxation and makes it extremely difficult for tribal governments to raise revenues by imposing their own taxes. Additionally, a number of state governments are failing to even reimburse lawfully owed taxes to tribes. All of these factors have grave effects on economic development in Indian Country.

This debate has resurfaced again and we anticipate another piece of tax legislation in this first session of the 107th Congress. The collection of state and local taxes in Indian Country is an issue that many tribal and state governments have resolved effectively through tribal state tax compacts. NCAI seeks the support of this Committee in opposing any tax legislation that would force tribes to collect and remit state sales taxes, which ultimately makes the federal government the states tax collector. Tribes and states should be left alone to work out their difference as sovereigns.

Not all tax legislation however has been detrimental. Indian Country has been working very hard to introduce affirmative pieces of tax legislation. In the 106th Congress, the Federal Unemployment Tax Act was signed into law as Public Law 106-554, and treats tribal employers like other government employers in regards to unemployment tax. In the 107th Congress, numerous pieces of tax legislation have been introduced to help spur investments in community, infrastructure, and economic development. Additionally, there has been legislation to provide for the issuance of tax-exempt bonds by Indian tribal governments. Second to education, tax legislation will be a top priority for the Bush administration providing a perfect opportunity to have these positive pieces of legislation passed. We seek the support of this Committee in passage of these bills important to tribal governments.

X. TRUST FUNDS

By any measure, the federal government has fundamentally failed to maintain its responsibilities for management of Indian lands and natural resources and the funds derived therefrom. Over the last year, NCAI has begun to work more intensively with the Bureau of Indian Affairs on any corrections to trust management that are underway. In particular, NCAI has worked with the BIA on the development of the first round of “Trust Management Regulations” on trust funds, leasing, grazing and probate, and also worked with the Senate Committee on Indian Affairs on the passage of the Indian Land Consolidation Act Amendments of 2000. While some progress is being made in spots, overall we are very disappointed with the Department of Interior’s unwillingness to accept

¹H.R. 1814 - Introduced by Representative Peter J. Visclosky (D-IN) and Representative Ernest Istook (R-OK).

responsibility for reforming the trust management system. We strongly believe that vigorous Congressional oversight and technical changes to the underlying trust management statutes will be necessary in the coming year.

As a general statement, we believe that the Department of Interior continues to act as if it does not have the responsibilities of a trustee. The fact is that the United States, as a trustee, manages and administers trust property, resources and funds for both tribal and individual Indian trust beneficiaries, and when dealing with Indian trust or restricted property, including land, water, minerals, timber, funds and hunting and fishing rights, the Department has generally the same responsibilities as would a private trustee. E.g., Mitchell v. United States, 463 U.S. 206 (1983).

Although there are many examples of this, perhaps the most fundamental is the way the Department's "final" regulations fail to deal with the primary source of failure in the trust management system: internal controls, accounts receivable and monitoring and enforcement on uncollected trust funds from the sale or leasing of trust resources. There has been far more money lost in the Indian trust system from payments that were never received than from mismanagement of funds after receipt. It is undeniable that collecting trust funds from the development of trust resources is a critical aspect of trust management. Yet there is no discussion in the government's Part 115 on Trust Funds that deals with policies regarding collection or accounts receivable. These are not the standards for a trustee.

Our concerns on these matters relate to the overall architecture of the trust management system. Currently there is a hodgepodge of variously outdated and dysfunctional trust management systems across the BIA Regions and Agencies. The purpose of the BIA trust reform project is to create modern, uniform systems. Yet, the proposed regulations do little to address what the ultimate trust management systems will look like. The policies and procedures currently contemplated are being drafted in a vacuum, without a structural foundation of how the trust management system will operate. It is notable that this criticism, a lack of structural foundation, is exactly the same as has been leveled against the Department's development of the new computer system, the Trust Asset and Accounting Management System.²

Our discussions with the Office of Trust Funds Management (OTFM) and the BIA Office of Trust Policies and Procedures have led us to the conclusion that many of these issues remain unresolved because of existing structural and management divisions within the Department of Interior, and a lack of coordination or integration. The responsibilities for performing tasks that are essential to trust management seem to fall between agencies and between job descriptions. We have been assured that some day in the future the OTFM TFAS computer system will be compatible with the BIA TAAMS computer system, and that they will be able to print out an "exceptions report"

²Indian Trust Funds: Challenges Facing Interior's Implementation of New Trust Asset and Accounting Management System (Testimony, 07/14/1999,GAO/T-AIMD-99-238).

that will show payments that were due but not received. However, no office seems to be responsible for running the “exceptions report” and no office seems to be responsible for taking action to notify the lessees and begin the process of collection. We believe that issues such as these must be specifically addressed within the proposed regulations.

Unfortunately, we believe that Congressional oversight will be needed to ensure that the BIA develops the overall structural, management and staffing framework for its trust management system as a part of the development of the regulations that will drive that system. We believe that an appropriate management structure should begin with an analysis of what obligations and services must be provided to Indian beneficiaries, and then structured to ensure that obligations are met, that offices work together, and that employees are held accountable for performing their duties. In this regard, we believe that the BIA should look toward private sector trust management systems and develop a system that is much more oriented toward the beneficiary.

Finally, we would like to note several areas of underlying trust management law where we would like to work with Congress on improving the statutes. First, we believe that Congress should directly address the trust funds management and provide clear guidance to the BIA and the OTFM on roles and responsibilities for trust funds management and particularly in a number of areas on Individual Indian Money (IIM) accounts. Second, the Indian Land Consolidation Act of 2000 was a big step forward in helping move the probate of Indian estates forward. An important next step will be to consider developing a federal probate code for the probate of Indian estates where the tribe has not established its own code. In far too many instances, Indian probate cases are decided under state laws which do not adequately address the concern relevant to Indian trust property. In addition, a federal probate code would serve to resolve conflicts of laws issues and generally speed the resolution of the backlog of Indian probate cases. Finally, we would like to ask the Committee to consider revising the general statute on surface leasing of Indian lands found at 25 U.S.C. 415 in light of the modern era of tribal self-determination. Our view is that tribal governments are considerably more sophisticated than in the 1950's when this statute was adopted, and that it is time to allow tribes to have a greater role in approval of leases, particularly short term leases. This type of change could considerably reduce the workload of the BIA, particularly if it were paired with change to the law regarding lease appraisal. The current statute also contains the vestiges of the discredited termination policy, and these provisions should be updated as well.

XI. LAW ENFORCEMENT

Despite comprising the smallest segment of the Nation's population, American Indians are more than twice as likely to be the victims of violent crime than any other race, according to statistics released on March 18 2001, by the Department of Justice (DOJ).

In a "Special Report on Violent Victimization and Race, 1993-98", the DOJ Office of Justice Program reported that:

- ▶ Between 1993 and 1998, the rate of victimization among American Indians over the age of 12 was 119 per 1,000. This was more than twice that experienced by African-Americans (57 per 1,000), two-and-a-half times that experienced by Whites (45 per 1,000), and four-and-a-half times that experienced by Asian-Americans (26 per 1,000).
- ▶ American Indian women, in particular, were the victims of intimate partner violence at higher rates than their counterparts. Between 1993 and 1998, 23 per 1,000 American Indian women were victimized compared to 11 per 1,000 African-American, 8 per 1,000 White, and 2 per 1,000 Asian-American.
- ▶ Whether male or female, urban or rural, married or unmarried, young or old, high income or low, American Indians were victimized at disproportionately higher rates than any other racial group. Overall, American Indians were 1.3 percent of all victims of violent crime, but are just 0.5 percent of the total population.

The latest statistics are the second set of numbers the Justice Department has compiled about violence in Indian Country. This study shows violent crime against Indians has stayed the same while violent crime against all other U.S. races has fallen and that American Indians experienced the highest rates of overall and serious violent crimes regardless of the locality of residence considered. These statistics confirm that rapes, assaults, and serious violent crimes continue to plague American Indians just as crime among other races has decreased. This leaves Indians twice as likely to be victims no matter where they reside.

With the current and ongoing public safety crisis in Indian Country, additional support for the improvement of law enforcement on tribal lands is urgent. The level of law enforcement services that many Americans take for granted rarely exists on or near Indian lands. There are only 2,380 BIA and tribal uniformed officers available to serve an estimated 1.4 million Indians covering over 56 million acres of tribal lands in the lower 48 states. On tribal lands, 1.3 officers must serve every 1,000 citizens, compared to 2.9 officers per 1,000 citizens in non-Indian communities under 10,000. A total of at least 4,290 sworn officers are needed in Indian Country to provide a minimum level of coverage enjoyed by most America.

The member tribes of NCAI are encouraged by Secretary Norton's recent testimony regarding her commitment to provide adequate law enforcement resources to Indian Country and seek the support of this Committee in continued funding for the joint DOJ-BIA Law Enforcement Initiative.

XII. TRANSPORTATION

There is still an enormous need for physical infrastructure on Indian lands throughout the country. This infrastructure is necessary for Indian tribes and their citizens to carry out emergency services, law enforcement, and the transportation of goods and services. Indeed, good transportation is fundamental to attracting private investment and enterprise into Native communities. When entrepreneurs or investors are calculating whether to invest in a community they first look to see if the basic building blocks exist within the community. Roads, highways, electricity, potable water, and other amenities are critical factors that investors look to before making their investment decisions.

NCAI appreciates the focus of this Committee in addressing the enormous need for transportation infrastructure on Indian reservations throughout this country. However, in the last Congress, legislation to remove the so-called “obligation limitation” from the Indian Reservation Roads (IRR) program under TEA-21 did not pass, nor were efforts to secure additional resources to offset this obligation limit through the appropriations process successful. This failure to fully fund the IRR program, despite significant advocacy efforts by tribal governments underscores the need to enact legislation that would address this issue. Therefore, NCAI fully supports S. 344 as it would provide a fix to TEA-21 by removing the obligation limitation contained within the Act and would allow the already-authorized funds for Indians to reach the intended beneficiaries.

XIII. TRIBAL-FEDERAL GOVERNMENT-TO-GOVERNMENT CONSULTATION

On November 6, 2000, the much anticipated Executive Order 13175, Consultation and Coordination with Indian Tribal Governments was signed. This Executive Order provides that “each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This Executive Order was and continues to be viewed by Indian Country as a very positive step in the strengthening of the government-to-government relationship.

NCAI and our tribal leader workgroup worked extensively with the Bureau of Indian Affairs and the Department of Energy in formalizing consultation policies for those agencies. However, we understand that the Department of Education is finalizing its consultation policy and like other department or agencies, has failed to seek tribal input. NCAI urges this Committee and Congress to support the Executive Order and to ensure that its mandate is carried out. This is of particular importance, since the Administration is creating an Interagency Working Group on Federalism to consult with state and local officials on issues pertaining to federalism including, but not limited to, the issuance of the new Executive Order on Federalism.

In the words of Chairman Robert Chicks, co-chair of the tribal leaders workgroup on consultation, “don’t make decisions about us without us.”

XIV. CENSUS 2000

Mr. Vice Chairman, as you may know, the Census Bureau is releasing this month block level population numbers to the states for use in the redistricting process. This data, which include racial and ethnic characteristics, are the first detailed numbers to emerge from last year's decennial census. NCAI is proud of its efforts to improve the conduct of the census in Indian Country and Alaska Native villages and to encourage census participation among our people on reservations and other tribal lands, in remote Alaskan communities, and in urban areas.

According to the Census Bureau's Accuracy and Coverage Evaluation (A.C.E.) survey, the net national undercount in Census 2000 is lower than in 1990, 1.2 percent compared to 1.6 percent ten years ago. The net undercount for American Indians living on reservations also was reduced, from 12.2 percent in 1990 to 4.7 percent in 2000. We are encouraged by this significant drop in the undercount rate for the residents of Indian Country, and we commend the Census Bureau for consulting with tribal governments in its efforts to improve census operations in many important respects.

Nevertheless, we are deeply concerned about the disproportionate undercount of American Indians, both on and off reservations, and of Alaska Natives, in the census. Census 2000 missed nearly one in twenty Indians living on reservations -- the highest undercount of any racial or ethnic group. Viewed another way, people in Indian Country were nearly seven times as likely to be missed as non-Hispanic whites. The undercount of American Indians and Alaska Natives living off reservations also was disproportionately high -- 3.3 percent.

Despite the persistence of this "differential undercount" of American Indians, other people of color, and the poor, a committee of Census Bureau experts recommended earlier this month against the release of statistically adjusted numbers based on the A.C.E. survey. The committee cited a lack of time to reconcile differences between the A.C.E. estimate of the nation's population and an independent demographic estimate developed by the Bureau. Secretary of Commerce Donald Evans agreed with the recommendation and ordered the release of unadjusted numbers to the states for redistricting purposes.

We cannot fully understand and analyze the apparent substantial undercount of our people without evaluating the adjusted numbers. The Census Bureau's expert committee, while recommending against release of the adjusted data at this time, confirmed the high quality of the coverage evaluation survey and said there is "considerable evidence" that the adjusted numbers are more accurate than the raw census counts. These conclusions lead us to believe that the undercount of American Indians in Census 2000 is not a statistical creation but a very real and troubling outcome of the traditional census process that must be corrected using the best scientific methods available.

Therefore, NCAI called upon the Commerce Department and the Census Bureau to release the A.C.E. adjusted data as soon as possible, to allow for the fullest public scrutiny and evaluation of Census 2000, and to help policymakers in Congress and federal agencies make informed decisions about program development and the allocation of fiscal resources to those most in need. We seek support of this Committee in bringing about that disclosure in a timely way.

XV. NATIVE HAWAIIANS

Mr. Vice Chairman, as you know, NCAI was organized in 1944 to fight against termination of tribal sovereignty and the assimilation policies promulgated by the federal government and that we are dedicated to protecting the rights of tribal governments, as well as to working with all Native people to achieve self-determination and self-sufficiency. It is in this spirit that we strongly support S. 81 and any measure that would provide the recognition of Native Hawaiian sovereignty by the federal government and the creation of a process that will lead to self-determination for Native Hawaiian people.

It is important to formally recognize the sovereignty of the Native Hawaiian people because of the historical wrongdoings and deprivations that the Native people faced at the hands of the United States when their government was taken from them. But self-determination is needed not only to ensure a measure of justice, but more importantly to protect the unique indigenous Hawaiian culture which is constantly threatened by the incursions of a predominant non-native culture. Self-determination is also necessary for the protection and governance of lands, which are necessary for any culture to continue to survive, to allow native people to live together as a community, continue traditional land-based cultural practices, and provide the economic means to live productive and healthy lives.

XVI. CONCLUSION

Vice Chairman Inouye, as we continue to urge the Congress to fulfill its fiduciary duty to American Indians and Alaska Native people, I would like to thank you for this remarkable opportunity to present testimony on the goals and priorities of the member tribes of NCAI. The support of this Committee in the past has been crucial in our constant fight for self-determination. Again in this Congress, we look to you and the Committee for its unwavering support in not only the areas that have been identified, but in those areas that affect American Indians and Alaska Native people. As you are well aware, tribes throughout the nation relinquished their lands, as well as their rights to liberty and property, and NCAI asks that the Congress through your assistance maintain the federal trust responsibility to Indian Country and continue to assist tribes on the road toward self-sufficiency. Thank you.